

Wednesday, October 3, 2007

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:30 a.m., Ms. Yee, Chairwoman, Ms. Chu, Vice Chair, Mr. Leonard and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SALES AND USE TAX APPEALS HEARINGS**

Frederick Joe Miller, 266145 (EA)

7-1-96 to 9-30-07, \$7,196.88 Tax

For Claimant:

James Demetriou, Enrolled Agent

Thomas Nitt, Attorney

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board's notice of levy served on CT Corporation, the California-registered agent for service of process for an out-of-state stock brokerage company, can legally reach claimant's assets located at the out-of-state office of the stock brokerage.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim for refund be submitted for decision.

Rodney Benn Productions, Inc., 294607 (UT)

6-17-02, \$9,075.00 Tax, \$907.50 Failure to File Penalty

For Petitioner:

Rodney Benn, Taxpayer

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that it did not purchase the aircraft for use in California, such that no use tax applies.

Whether relief of the penalty for failure to file a return is warranted.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Alex K. Soliman, Inc., 297064, 317007 (EH)

1-1-01 to 12-31-03, \$8,509.51 Tax

For Petitioner:

Alex K. Soliman, Taxpayer

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that three specific sales were exempt sales in interstate commerce.

Whether petitioner's claim for refund should be granted.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, October 3, 2007

Troy A. Richardson, 346909 (FH)

4-1-01 to 6-30-04, \$3,715.36 Tax

For Petitioner:

Troy A. Richardson, Taxpayer

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that a specific sale was an exempt sale in interstate commerce.

Whether petitioner has shown error in the Department's determination of the difference between reported and recorded taxable sales for the fourth quarter 2003.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Rishi, Inc., 287281 (AA)

1-1-01 to 12-31-03, \$10,573.29 Tax, \$1,072.16 Negligence Penalty

For Petitioner:

Rakhee Vaswani, Taxpayer

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is entitled to further adjustments for non-sale amounts for the year 2001.

Whether petitioner's sales for 2002 and 2003 should be computed using net worth analysis, bank deposits, or the federal income tax returns.

Whether petitioner was negligent.

David H. Levine, Tax Counsel, Appeals Division, Legal Department, reported the Appeals Division's revised recommendation.

Action: Upon motion of Ms. Mandel, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Sandy Ann Oneal Kane, 308481 (GH)

4-1-02 to 3-31-03, \$15,993.40 Tax, \$2,624.00 Penalties

For Petitioner:

Sandy Oneal, Taxpayer

For Sales and Use Tax Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner is liable as a responsible person for the tax liability incurred by The Oneal Marketing Group Inc.

Mr. Levine reported the Appeals Division's revised recommendation.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, October 3, 2007

Digby Industries, Inc., 239664 (EH)

6-1-99 to 6-30-02, \$30,360.97 Tax

For Petitioner:

Jeff Digby, Taxpayer

Brent Hales, Attorney

For Sales and Use Tax Department:

Robert Stipe, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner made a timely election to pay tax based on the purchase price of rental vehicles.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

General Petroleum, Corporation, fka, G.P. Resources, Inc., 262777 (AA)

4-1-01 to 12-31-02, \$1.00 or more Claim for Refund

For Claimant:

Appearance Waived

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether claimant has established that its sales of fuel qualify for the exemption for sales of fuel sold to a water common carrier for immediate shipment outside this state for consumption in the carrier's business as a common carrier after the first out-of-state destination.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim for refund be denied as recommended by the Appeals Division.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 3, 2007**

Frederick Joe Miller, 266145 (EA)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the claim for refund be denied as recommended by the Appeals Division.

Rodney Benn Productions, Inc., 294607 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Alex K. Soliman, Inc., 297064, 317007 (EH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, October 3, 2007

Troy A. Richardson, 346909 (FH)

Final Action: Upon motion of Ms. Steel, seconded by Mr. Leonard and duly carried, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, Ms. Yee and Ms. Chu voting no, the Board ordered that the petition be granted as to issue 1 and the remainder be redetermined as recommended by the Appeals Division.

Rishi, Inc., 287281 (AA)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Yee and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Sandy Ann Oneal Kane, 308481 (GH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the penalties be deleted and that the remainder of the petition be redetermined in accordance with the revised recommendation of the Appeals Division.

Digby Industries, Inc., 239664 (EH)

Final Action: Ms. Steel moved to accept the election as timely with a taxable measure of \$35,000.00. The motion was seconded by Mr. Leonard but failed to carry, Mr. Leonard and Ms. Steel voting yes, Ms. Yee, Ms. Chu and Ms. Mandel voting no.

Upon motion of Ms. Yee, seconded by Ms. Chu and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board recessed at 11:40 a.m. and reconvened at 1:30 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

**SALES AND USE TAX APPEALS HEARINGS**

Center for Bio-Ethical Reform, 271792 (UT)

July 23, 2003, \$13,119.00 Tax

For Petitioner:

Gregg Cunningham, Taxpayer

J. Wiley Jones, Attorney

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner purchased the subject aircraft for use in California.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, October 3, 2007

Wimatex, Inc., 299479, 401103 (AA)

1-1-00 to 12-31-02, \$107,137.03 Tax

For Petitioner:

Alan I. Kaplan, Attorney

Michael Khim, CPA

Mario Lim, Representative

For Sales and Use Tax Department:

Trecia Nienow, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that it is entitled to relief based upon its reliance on alleged erroneous advice received from the Sales Use Tax Department.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Jose Efrain Medinilla, 252958 (AP)

1-1-00 to 9-30-03, \$29,549.45 Tax, \$2,954.98 Negligence Penalty

For Petitioner:

Jose Medinilla, Taxpayer

For Sales and Use Tax Department:

Robert Tucker, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner has established that the bank deposits used by the Department to calculate the amount of unreported taxable sales is excessive because it includes income unrelated to taxable sales.

Whether the Department was correct to disallow claimed sales for resale for which petitioner could not provide valid resale certificates or prove that the property was either resold or was being held for resale, without any intervening use.

Whether petitioner was negligent.

Mr. Medinilla requested an extension.

Action: The Board ordered a new appeals conference be held.

Jun Ja Hwang, 259556 (AS)

7-1-00 to 6-9-03, \$35,339.11 Tax, \$3,533.96 Penalty

For Petitioner:

Sam Pak, Enrolled Agent

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:25 p.m. and reconvened at 3:35 p.m. with Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel present.

Wednesday, October 3, 2007

**Ron Sanchez, 283578 (EH)**

4-1-00 to 3-31-03, \$4,306.64 Tax, \$00.00 Penalty

For Petitioner:

Ron Sanchez, Taxpayer

Amy Poirier, Witness

For Sales and Use Tax Department:

Christine Bisauta, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that the single transaction at issue was an exempt sale in interstate commerce.

Action: Upon motion of Mr. Leonard, seconded by Ms. Steel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board deferred this petition to allow a possible dual determination against the purchaser of the vessel.

**Shoreline Helicopters, LLC, 297719 (UT)**

December 28, 2001, \$52,150.00 Tax

For Petitioner:

Brett Whitaker, Taxpayer

For Sales and Use Tax Department:

Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner has established that it is entitled to the common carrier exemption.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

**Laurencio Gutierrez, Sergio Gutierrez, and Ruben Gutierrez Alvarez, 312859 (FH)**

1-1-01 to 12-31-03, \$85,397.36 Tax, \$00.00 Penalty

For Petitioner:

Laurencio Gutierrez, Taxpayer

Sergio Gutierrez, Taxpayer

Cesar Carreasco, Representative

For Sales and Use Tax Department:

Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.

Action: The Board directed the Department to meet with the taxpayer and continue the hearing later in the day.

**Gary R. Wickel, 288134 (FH)**

4-1-01 to 7-24-03, \$31,940.98 Tax, \$5,808.62 Penalties

**John Peter Wickel, Jr., 286273 (FH)**

4-1-01 to 7-24-03, \$31,940.98 Tax, \$5,808.62 Penalties

For Petitioner:

Victoria M. Camilli, Attorney

Gary R. Wickel, Taxpayer

John Peter Wickel, Jr., Taxpayer

Wednesday, October 3, 2007

For Sales and Use Tax Department: Christine Bisauta, Tax Counsel  
Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.  
Issues: Whether petitioner is personally liable for the unpaid tax, penalty, and interest of Imperial Hospitality Associates, Inc.  
Whether petitioner has shown cause to delete the penalties.  
Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Michael Henry Gryn, 249777 (AA)

1-1-95 to 12-31-02, \$00.00 Tax, \$00.00 Penalty

For Petitioner: David Park, Accountant

For Sales and Use Tax Department: Carla Caruso, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether there is any basis for relief of interest.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division and directed staff to inform the petitioner of the Offer in Compromise program.

Laurencio Gutierrez, Sergio Gutierrez, and Ruben Gutierrez Alvarez, 312859 (FH)  
(Continued from earlier in the day.)

1-1-01 to 12-31-03, \$85,397.36 Tax, \$00.00 Penalty

For Petitioner: Laurencio Gutierrez, Taxpayer

Sergio Gutierrez, Taxpayer

Cesar Carreasco, Representative

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether adjustments are warranted to the audited overstatement of claimed nontaxable sales for resale.

Action: Upon motion of Mr. Leonard, seconded by Ms. Chu and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the petitioner's supporting documents, the Department's response and provide its recommendation to the Board.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD OCTOBER 3, 2007**

Center for Bio-Ethical Reform, 271792 (UT)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Wednesday, October 3, 2007

Wimatex, Inc., 299479, 401103 (AA)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and duly carried, Ms. Yee, Ms. Chu and Ms. Mandel voting yes, Mr. Leonard and Ms. Steel voting no, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Jun Ja Hwang, 259556 (AS)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **SALES AND USE TAX APPEALS HEARING**

Hair Touch, 281210 (AC)

4-1-00 to 3-31-03, \$39,106.97 Tax, \$3,910.69 Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.

Issues: Whether adjustments should be made based on a lower markup and lower amounts of merchandise purchases.

Whether petitioner was negligent.

Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

### **FINAL ACTION ON SALES AND USE TAX APPEALS HEARING HELD OCTOBER 3, 2007**

Gary R. Wickel, 288134 (FH)

John Peter Wickel, Jr., 286273 (FH)

Final Action: Upon motion of Ms. Chu, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Ms. Chu, Mr. Leonard, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division. Further, the Board directed staff to confirm that all monies have been properly credited to the liability and to have a statement of account sent to the taxpayers.

The Board adjourned at 6:15 p.m.

*The foregoing minutes are adopted by the Board on February 1, 2008.*

Note: The following matters were removed from the calendar prior to the meeting: *Manouch Lankarani, 252973 (EH)*; and, *Mountain Magic Motors, Inc., 252972, 359519 (EH)*.